

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

2:05-CR-165 JCM (GWF)

Plaintiff,

V.

BERNARD LEYVA,

Defendant.

ORDER

14 Presently before the court is *pro se* defendant Bernard Leyva's motion to modify judgment.
15 (Doc. # 106). The government has filed a response in opposition. (Doc. # 107).

16 Pursuant to his guilty plea, the defendant was sentenced to 168 months imprisonment
17 followed by five years supervised release for conspiracy to possess with intent to distribute a
18 controlled substance and aiding and abetting, in violation of 21 U.S.C. §§ 846, 841(a)(1),
19 841(b)(1)(A)(viii) and 18 U.S.C. § 2. (See doc. # 82).

20 The defendant now moves the court to reduce his sentence, alleging that “on April 1, 2014,
21 the United States Sentencing Commission voted to allow convicted drug offenders to reduction [sic]
22 of sentence to alleviate prison overcrowded population [sic].” (Doc. # 106, p. 2). The defendant
23 further asserts that, to best of his knowledge, the amendment applies retroactively and, as a result,
24 he is entitled to have his sentence reduced.

25 As noted by the government, no amendment to the sentencing guidelines took effect on April
26 1, 2014. Rather, the Sentencing Commission has submitted to Congress amendments to the
27 guidelines which would lower the ranges pertaining to certain drug offenses. However, the

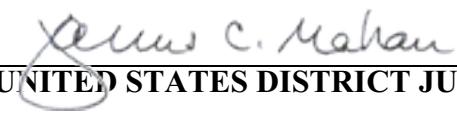
1 amendment is not yet in effect, and it is unclear if, and how, the amendment would apply
2 retroactively.¹

3 In short, defendant's motion is premature and will be denied without prejudice.

4 Accordingly,

5 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that defendant's motion to
6 modify judgment (doc. # 106) be, and the same hereby is, DENIED without prejudice.

7 DATED May 22, 2014.

8 
9 **UNITED STATES DISTRICT JUDGE**

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27 ¹ The amendments will become effective on November 1, 2014, unless Congress acts to the contrary. However,
28 issues regarding retroactivity are currently open to public comment and remain unresolved. See
http://www.uscc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/20140430_RF_Proposed_Amendments.pdf